

Judiciary Committee Testimony

Monday, March 3, 2014

S.B. 258

An Act Concerning Bad Faith Claims Or Assertions of Patent Infringement

Chairmen Coleman, Chairman Fox and members of the Committee, my name is Rheo Brouillard, I am a resident of Hampton and President & CEO of the Willimantic based Savings Institute Bank & Trust Company. I also serve as the co-chair of the CT Bankers Association's Legislative Committee and the Chairman of the American Bankers Association's Community Banks Council. Thank you for giving me the opportunity to testify before you today on the merits of Senate Bill 258.

On January 4th, 2013 Savings Institute, like 30+ other community banks in Connecticut received a letter attempting to extort money from the Bank (attached). The letter, from an Albert L. Jacobs with the firm of Tannenbaum Helpern Syracuse & Hirschtritt LLP, purported that Automated Transactions LLC (ATL) owned patent rights to certain ATM transactions and as such the Bank was subject to suit for patent infringement. The letter further offered to "sub-license" the rights to continue to allow the Bank to use its ATMs. The letter also claimed that, "Our investigation has shown that your ATMs...communicate over the internet". It was clear from the onset that no investigation had ever been conducted since our ATMs DO NOT communicate over the internet, but rather are connected to our third party processor via direct telephone line connection. When we requested evidence of their investigation so that we might properly evaluate their claim, ATL simply responded by indicating they would provide us additional time beyond their initial two week deadline. Further evidence of ATL's lack of having conducted an investigation came later as we learned that other Connecticut banks had received an identical letter, including one bank with no ATMs. As you can see from the attached, ATL simply provided a list of numbers, asserting that these represented the various patents they had the rights to. With so little information, the Bank was unwilling to negotiate with ATL, never mind settle.

Subsequent to receiving the letter, and upon investigation of my own, I learned that not only had community banks in Connecticut received an identical letter, but that community banks in other States had been similarly contacted over a period of several months. I learned too that many banks in Maine, Massachusetts, New Hampshire and Rhode Island had entered into settlement agreements with ATL at a cost of \$1,000 per ATM, assuming that to do so was easier than defending oneself against a suit - in fact ATL had brought suit against several banks in an effort to intimidate the industry as a whole and to apply as much pressure as possible on banks to settle. For the cost of some stationary and postage, these unscrupulous individuals extorted significant sums of money from community banks throughout New England and the nation. Had Savings Institute elected to settle our payment alone to ATL would have been \$27,000.

So how did we avoid falling prey to this extortionist? The banks in the State were fortunate. Shortly after receiving our letters, we learned that ATL received an unfavorable ruling in the Delaware courts which vacated its claim to its primary patent (the "parent" to the other 12 listed "children" on its letter). While ATL ignored the court's ruling and continued to pursue its

claims, including those for infringement on the vacated patent, many of us in the State have chosen to similarly ignore ATL's demands. In fact a group of banks throughout New England have banded together to bring suit against ATL for violation of professional conduct for making claims after the court has made its ruling. Perhaps as a result, Savings Institute has had no further contact from ATL and I believe that to be true with the other Connecticut banks.

You may notice that I repeatedly referred to the community banks as having been the ones contacted by ATL. Experts with whom I have spoken explain that "Patent Trolls" like ATL limit their claims against smaller companies, anticipating that these lack the resources to bring their own legal action and thus simply settle. As noted above, they often file suit against a few companies in the State they are targeting at the time in order to intimidate others into quickly settling.

"Patent Trolls" are not unique to the banking industry and therefore I am confident you have and will hear similar testimony from other industry groups. The problem is so widespread that I understand as many as 23 other States are considering similar legislation. S.B. 258 would certainly provide some protection to Connecticut companies and send a strong message to other "Trolls" that attempting to extort money in Connecticut may not be worth the effort.

Thank you for your willingness to address this serious matter. Please bring this much needed legislation out of Committee and encourage your fellow legislators to pass this Bill.

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January 3, 2013

Mr. Rheo Brouillard, President
Savings Institute Bank & Trust Company
803 Main Street
Willimantic, CT 06226

Re: ATL Patent Portfolio Covering ATMs

Dear Mr. Brouillard:

In case you are not already aware from the banking associations, Automated Transactions LLC has a Patent Portfolio, a copy of which is attached to this Exhibit A hereto, which covers the manner in which ATMs communicate with the end point in a retail transaction such as a financial transaction with the bank. This is particularly relevant in terms of customers using your institution's ATMs to conduct a retail transaction such as a withdrawal of money from an account other than from your bank. Our investigation has shown that your ATMs would connect with a service provider and the service provider in turn communicates over the Internet to complete the financial transaction or if it is not able to be completed for some reason to communicate that result to the customer. The Portfolio listed in Exhibit A includes various combinations of direct or indirect access of the ATM to the Internet, communications between ATMs via an intranet to the Internet, connections via a network services and other various methods by which financial institutions and others who have ATMs communicate to complete their transactions for their customers. ATL has to date sub-license more than one hundred (100) financial institutions and is amenable to granting further sub-licenses. ATL has also filed approximately ten (10) lawsuits against various financial institutions when it was not possible to reach an amicable agreement. ATL hopes that your institution will be amenable to an amicable resolution, but in the event it is not we are then we prepared to place it on the list of institutions against which ATL will ultimately file patent infringement suits.

Please let me know within two (2) weeks from the date of this letter whether you are interested in discussions toward an amicable resolution. Otherwise, ATL will proceed accordingly

Very truly yours,

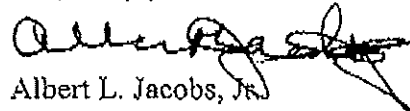

Albert L. Jacobs, Jr.

EXHIBIT A

United States Patents

7,575,158

7,597,248

7,600,677

7,699,220

6,945,457

7,571,850

7,591,420

7,597,251

7,617,973

~~7,621,444~~

7,793,830

7,802,718

7,837,101